



State of Washington REPORT OF EXAMINATION FOR WATER RIGHT APPLICATION

PRIORITY DATE
3/13/2008

WATER RIGHT NUMBER
S3-30553

MAILING ADDRESS
Mark Simonson
6849 East Pearl Street
Mesa, Arizona 85207

SITE ADDRESS (IF DIFFERENT)
285 Frissell Road
Usk, Washington 99180

Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.055	CFS	0

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Fish Propagation	0.055			0		01/01 - 12/31

0.055 cubic feet per second, continuously, to fill a pond for non-consumptive fish propagation and recreation use

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Pend Oreille	Unnamed Spring	Skookum Creek	62-Pend Oreille

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Unnamed Spring	443334319002		33N	44E	34	NE¼SW¼	48.3141°N	-117.2288°W

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

443334319002

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

The south 420 feet of the E½NE¼SW¼ of Section 34, T. 33N., R. 44 E.W.M.

Proposed Works

Non-consumptive spring diversion to fill a pond for fish propagation and recreation

Development Schedule		
BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
July 1, 2013	July 1, 2015	July 1, 2016

Measurement of Water Use

How often must water use be measured?	Bi-weekly
How often must water use data be reported to Ecology?	Upon Request by Ecology
What volume should be reported?	None
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm or cfs)

Bi-weekly means every two weeks

Provisions

Pond Requirements

The pond/excavations (small impoundment) associated with use of water under this authorization shall be lined in accordance with RCW 90.03.370(8), for the purpose of minimizing the loss of water through seepage.

The pond is allowed one filling or charging of the system each year, subject to existing right. Water diversion beyond the first filling requires that inflow equals outflow. Additionally, the water returned must meet water quality standards.

Measurements, Monitoring, Metering and Reporting

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173.

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Department of Fish and Wildlife Requirement(s)

A permit from the Department of Fish and Wildlife may be needed to raise fish in any state waters: <http://wdfw.wa.gov/about/contact/>.

Water Use Efficiency

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

Proof of Appropriation

The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the permit. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Surface Water Application No. S3-30553, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this day of 2012.

Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

INVESTIGATOR'S REPORT

Application for Water Right – Mark Simonson

Water Right Control Number S3-30553

Dan Tolleson, Department of Ecology

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30553.

Table 1 Summary of Requested Water Right

Applicant Name:	Mark Simonson
Date of Application:	April 3, 2008
Place of Use	South 420 feet of the E½NE¼SW¼ of Section 34, T. 33N., R. 44 E.W.M.

County	Waterbody	Tributary To	WRIA
Pend Oreille	Unnamed springs	Skookum Creek	62-Pend Oreille

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Fish Propagation and Recreation use	0.055	CFS	0	01/01	12/31

Table 2 Proposed Sources of Withdrawal or Diversion

Source Name	Parcel	Twn	Rng	Sec	QQ Q	Latitude	Longitude
Unnamed Spring	443334319002	33N	44E	34	NE¼SW¼	48.3141°N	-117.2288°W

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum: NAD83/WGS84.

Legal Requirements for Approval of Appropriation of Water

RCW 90.03 authorizes the appropriation of public water for beneficial use and describes the process for obtaining water rights. Laws governing the surface water right permitting process are contained in RCW 90.03.250 through 90.03.340. In accordance with RCW 90.03.290, determinations must be made on the following four criteria in order for an application for water rights to be approved:

- Water must be available
- There must be no impairment of existing rights
- The water use must be beneficial
- The water use must not be detrimental to the public interest

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Newport Miner on October 3rd and 10th, 2012 and no protests were received.

Consultation with the Department of Fish and Wildlife

RCW 90.03.280 requires the Department to send notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. The department also provides notice to appropriate Indian Tribes. The department has developed an electronic procedure to meet this statutory requirement. Applications are posted to an RSS (Really Simple Syndication) feed to which Department of Fish and Wildlife, Tribes and other agencies have been advised to subscribe. Through subscription to the RSS feed, interested parties may review new water right applications and provide comment. No comments were received.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, claims, and applications in the vicinity; (3) USGS topographic maps; (4) air photographs; (5) Pend Oreille (WRIA 62) Watershed Management Plan; and (6) discussions with Department of Ecology regional program staff.

A field investigation was conducted on September 13, 2012 by Dan Tolleson. Mr. Simonson owns both the proposed place of use and the proposed point of diversion. The project is located adjacent to a small tributary of the North Fork of Skookum Creek, approximately 2 miles east of Usk, Washington. This area is located within Water Resource Inventory Area (WRIA) 62, the Pend Oreille River watershed.

The Pend Oreille County Board of Commissioners adopted a watershed management plan, for WRIA 62, in 2005. This plan is currently in Phase 4 Implementation stage, with no instream flows set. Skookum Creek and its tributaries constitute a sub-basin within WRIA 62, lying generally to the northeast of its confluence with the Pend Oreille River. This area has multiple small tributaries creeks and many small tributary lakes. Through the watershed planning process, stream monitoring will occur for Skookum Creek to better understand its flows.

The Skookum Creek Sub-Basin has an administrative restriction known as Surface Water Source Limitation (SWSL). This SWSL closes Skookum Creek to all new consumptive uses, with the exception of

single domestic supply and stockwater. Therefore, the proposed pond diversion is required to be non-consumptive.

The proposed project is to develop the existing springs to provide water for fish propagation and recreation, through a small impoundment/pond. It has been estimated by the applicant that the springs can be developed to produce approximately 0.055 cfs or approximately 25 gallons per minute of continuous water supply for the pond. This quantity appears to be reasonable, but may be less depending on the springs output, especially in summer months. The applicant proposes to install a dam approximately 3-4 feet in height. He also proposes to excavate the bottom of the pond so the total depth of the pond is up to 9 feet. The exact size and shape of the pond will be determined as the excavation is dug, but the applicant intends to store less than 10 acre-feet of water. A pond liner will need to be installed to ensure that seepage is kept to a minimum and to ensure the pond remains non-consumptive.

Mr. Simonson has indicated that a 2-year development schedule is required to construct the project.

A well has been developed under the groundwater exemption in RCW 90.44.050 to provide domestic supply to the existing shop and home when it is constructed. Groundwater used under the exemption is limited to the quantities described in RCW 90.44.050.

Proposed Use and Basis of Water Demand

This applicant proposes to divert a maximum of 0.055 cfs for a non-consumptive pond used for fish propagation and recreational use. The proposed uses are beneficial uses. The pond is a small impoundment that does not require a reservoir permit.

Other Rights Appurtenant to the Place of Use

The review of Ecology records shows no rights, permits, applications and claims appurtenant to the project.

Impairment Considerations

Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. A water right application may not be approved if it would:

- Interrupt or interfere with the availability of water to an adequately constructed groundwater withdrawal facility of an existing right. An adequately constructed groundwater withdrawal facility is one that (a) is constructed in compliance with well construction requirements and (b) fully penetrates the saturated zone of an aquifer or withdraws water from a reasonable and feasible pumping lift.
- Interrupt or interfere with the availability of water at the authorized point of diversion of a surface water right. A surface water right conditioned with instream flows may be impaired if a proposed use or change would cause the flow of the stream to fall to or below the instream flow more frequently or for a longer duration than was previously the case.
- Interrupt or interfere with the flow of water allocated by rule, water rights, or court decree to instream flows.
- Degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users (e.g., via sea water intrusion).

The use of water for this project is non-consumptive fish propagation and recreational use. All water diverted will be returned to the un-named creek in which the spring naturally flowed. There are no intervening water rights between the point of diversion and the point of discharge. Because the proposal is non-consumptive, it will not impair other water users in the basin.

Water Availability

Water is physically and legally available since the use of water is non-consumptive.

Beneficial Use

The proposed use of water is defined in statute as a beneficial use (RCW 90.54.020(1)).

Public Interest Considerations

There has been no public expression of protest or concern regarding the subject proposal, and no findings through this investigation indicate that there would be any detrimental impact to the public welfare through issuance of the proposed appropriation.

Conclusions

Water is available for non-consumptive use and the proposed use is beneficial.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

0.055 cfs, continuously

0 acre-feet per year

Non-consumptive fish propagation and recreation use

Point of Diversion

NE¼SW¼ of Section 34, Township 33 North, Range 44 E .W.M.

Place of Use

South 420 feet of the E½NE¼SW¼ of Section 34, T. 33 N., R. 44 E.W.M.

Dan Tolleson, Report Writer

Date

If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.